

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5696

PETITION OF SENECA SPRINGS, LLC

(Hearing held January 9, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, February 14, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The existing single-family dwelling requires a .40 foot variance as it is within 49.60 feet of the front lot line. The required setback is fifty (50) feet.

Tony Crane of Seneca Springs, LLC, and James E. Glascock, P.E., of Macris, Hendricks and Glascock appeared at the public hearing on behalf of the petitioner.

The subject property is Lot 4, Block A, Little Bennett Estates Subdivision, located at 14913 Little Bennett Drive, Clarksburg, Maryland, in the RE-2 Zone (Tax Account No. 03208986).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. Mr. Glascock testified that the subject property is a 2.6 acre lot with restrictions on the buildable area consisting of: (1) a Category 1 Conservation Easement occupying a substantial portion of the rear of the lot; (2) a septic field for the subject property; and (3) a septic easement for the adjacent property, (Lot 5). (Transcript of Testimony (Tr.) at 3-4.) The petitioner testified that these features constitute physical restrictions that make the lot unique. (Tr. at 6-7, 14.)
2. Mr. Glascock testified that the building restriction line required for the septic field on the subject property limited the placement of the rear of the house. (Tr.) Mr. Glascock testified that when the septic easement for the adjoining property and the conservation easement are taken into account, the resulting buildable footprint on the subject property is more characteristic of a lot in the R-90 Zone than for the applicable RE-2 Zone. (Tr. at 7.)
3. Mr. Glascock testified that the house is fully constructed, and that the encroachment into the front yard setback, for which the variance is sought, is the result of a shift in building placement that occurred during construction. (Tr. at 5.)

4. Mr. Glascock testified that the area of the building footprint encroaching into the front yard setback is a triangle in shape with legs of 0.4 feet and 3.3 feet (Tr.), comprising an area of 0.66 square feet.
5. Mr. Glascock further testified that the adjoining houses on both sides are approximately 180 feet from the subject house, and that the encroachment for which the variance is sought will not have a detrimental effect on either property. (Tr. at 6.)

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's lot is peculiarly impacted by the location of the property's septic field, the septic easement for the adjacent Lot 5, and a Category 1 Conservation Easement. The Board further finds that the strict application of the regulations would result in an exceptional hardship upon the owner of the subject property.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the new single-family dwelling is de minimis.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The existing single-family dwelling will continue the residential character of the neighborhood and will not impair the intent, purpose and integrity of the general plan or the approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining and neighboring properties.*

The record contains no testimony or correspondence in opposition to the variance request and the Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of .40 feet from the required fifty (50) foot front lot line setback is granted subject to the following condition:

1. The petitioner shall be bound by all of its testimony and exhibits of record, the testimony of its witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 14th day of February, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.